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July 22, 1998

Arizona Corporation Commission

DOCKETED

JUL 23 1998

Mr. Ray T. Williamson  
Acting Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007-2996

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Re: Informal comments on the second staff draft of proposed revisions to be formally proposed to the Commission to amend the Retail Electric Competition Rules (R14-2-1601, et seq.), Docket No. RE-00000-C-94-0165

Dear Mr. Williamson:

I am submitting the following comments on behalf of the Arizona Transmission Dependent Utility Group<sup>1</sup> in response to your Memorandum of July 10, 1998 and as a follow-up to the testimony taken at the hearing on this subject before the full Commission on Wednesday, July 15, 1998, at which I testified.

1. We remain unsure of the status of a process for commenting on staff draft rules changes, especially when such "unofficial" changes are the subject of testimony taken at formally noticed Commission meetings. Under the process that you have chosen to follow, we must insist that our prior comments and these

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<sup>1</sup> Aguila Irrigation District, Ak-Chin Electric Utility Authority, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

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comments become part of the official rulemaking record along with all other comments submitted by all parties, oral and/or written. This is especially important because one of the likely issues in any court appeal of any aspect of these Rules is the extent of the administrative record in the rulemaking. Since these informal drafts are in fact products being considered not only by staff but by the Commissioners and are influencing the thinking of the Commissioners as they prepare to adopt emergency rules next month, there is absolutely no good reason why the comments received on these drafts and the drafts themselves should not be part of the rulemaking record.

2. Turning to the substance of the matter, we offer the following comments.

NUCLEAR FUEL DISPOSAL AND NUCLEAR DECOMMISSIONING COSTS  
SHOULD NOT BE PART OF THE SYSTEM BENEFITS CHARGE

In its June 22, 1998 Order (p.16), the Commission decided that nuclear fuel disposal costs should be added to nuclear power plant decommissioning costs as part of a system benefits charge collected as a non-bypassable charge or rate to be collected from all consumers located in the Affected Utility's service area who participate in the competitive market. Furthermore, the Opinion and Order opines that "the costs of systems benefits should be recovered at 100 percent." (p.22). The second draft of the proposed Rules (pp.14-15) carries forward that direction. Affected Utilities have already filed tariffs pursuant to the existing rules and now can file tariffs for systems benefits charges including nuclear fuel disposal cost estimates. Neither nuclear fuel disposal costs nor nuclear power plant decommissioning costs should be a system benefits charge or any other charge associated with the use of transmission or distribution facilities.

Nuclear fuel disposal costs and nuclear power plant decommissioning costs are admittedly generation-related costs. In a standard offer service tariff, including these charges in a bundled rate causes no problems, assuming the costs themselves are adequately proven. Including them as a wires charge is another matter. These costs should not be part of a wires charge for the following reasons:

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1. Collecting them in a wires charge constitutes a cost shift of a generation cost to transmission or distribution use;
2. Collecting them in a wires charge unfairly lowers Palo Verde costs related to competitive generation;
3. Collecting them in a wires charge constitutes a discriminatory rate tilt;
4. Collecting them in a wires charge forces wires users to pay for a cost without a commensurate benefit;
5. Paying them in a wires charge distorts the market forces that are supposed to determine the relative attractiveness of competing generation sources;
6. Collecting them in a wires charge impedes future construction of competitive generation sources by unfairly raising distribution costs;
7. Collecting them in a wires charge may violate Nuclear Regulatory Commission anti-trust conditions in the Palo Verde license;
8. Collecting them in a wires charge promotes a price squeeze on competitive generation; and
9. Collecting them in a wires charge skews and distorts stranded cost analyses.

Finally, the stated reason in the June 22 Opinion and Order for lumping these costs into a system benefits charge doesn't hold water. The Commission opined (p.16): "Further, for public health and public safety reasons we do not believe these should be lumped in with stranded costs." There is no explanation about why public health and/or public safety would be affected by the methodology utilized to collect an adequate amount of money to cover these costs. Since the Commission itself appears to recognize that little consumer shifting at the household level will take place in Arizona under this program, just as little shifting to competition has taken place in this part of the market in California, there is no reason not to collect these generation-related costs from those who purchase and enjoy

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the benefits of Palo Verde retail capacity and energy. Doing so would create the proper price signal for that resource and properly position it in the stranded cost analysis. Since the Arizona Public Service Company share of these costs is currently estimated by it in 1995 dollars to be some \$421 million, the potential for anti-competitive economic burden on distribution charges should be obvious. The Commission should reconsider its decision; it should order that these costs be collected as generation costs in the bundled standard offer service and from those other retail customers who purchase generation service from the Affected Utilities and electric service providers that are selling Palo Verde capacity and energy at retail in Arizona.

#### EXIT FEE

The June 22 Opinion and Order requires Affected Utilities to develop "a discounted stranded costs exit methodology that a customer may choose to determine an amount in lieu of making monthly payments." (p.19). Neither the first draft nor the second draft of the Rules changes carries forward that provision. In many situations, especially in rural areas, having this exit fee process will allow minor shifts in customer service without complicated ratemaking. Some of these types of transactions are already occurring even before stranded cost rules are in place. The rules need to reflect what the Commission ordered in June.

#### BURDEN OF PROOF

We have previously noted that the proposed Rules are totally devoid of guidance on the burden of proof required under various processes that require documentation. The most obvious are stranded costs, mitigation efforts, and systems benefits charges. Stranded cost estimates must be "fully supported" by analyses and by records. R14-2-1607.C. Systems benefits charges must be supported by "adequate supporting documentation". R14-2-1608.B. Yet the Commission has stated that Affected Utilities must "demonstrate they have aggressively pursued mitigation efforts. As a result, the Affected Utility has a high burden of proof regarding its mitigation efforts." (p.14) (emphasis supplied). Is there a separate yardstick for mitigation that is more severe than that for stranded cost estimates? Is there a lesser burden to demonstrate the adequacy

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of systems benefits charges than there is for either stranded costs or mitigation efforts? Should not the utility be held to the same high standard of proof throughout since all of these charges and decisions materially affect rates that will be charged to consumers that cannot be avoided?

At the very least, the Rules need to reflect what the Commission ordered in June, that is, that a high burden of proof is required concerning mitigation efforts. Ideally, that high burden of proof would apply across the board to all non-bypassable charges and their elements, such as mitigation efforts.

#### OTHER COMMENTS

Seriatim, we invite your attention to the following. You can't tell who is included in R14-2-1604A.2. What does "new competitive customers" mean? Is the 20% a "race to court house" that doesn't include residential customers? If it includes residential customers, can't they be frozen out by quicker feet from larger retail customers filling up the 20%?

You still have not fixed R14-2-1606.B. concerning the bidding requirement. Not every power purchase can be through competitive bidding. Even if you intend to disenfranchise a co-op's use of their own current resources, as AEPCO apparently thinks you have done, you still have to allow people to pick up short-term resources under circumstances where competitive bidding doesn't make sense. Thus, you still need to make the first sentence apply only to contracts in excess of a year.

It would be helpful if you would state in R14-2-1609.E. that the penalty you extract from solar-deficient electric service providers gets paid by their stockholders and not by their customers.

It would also be helpful for these Rules to recognize the concept of native load by changing the word "available" in the fifth line of R14-2-1610 to "reserved". As a practical matter, nobody can be put in a position of contracting away the distribution facilities to deliver electricity to homeowners and other retail customers but this rule doesn't say that.

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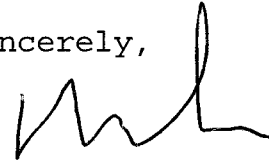
You need to scrap the conditions for an ISA in R14-2-1610.C. FERC will determine whether any ISA is adequate and it will be difficult enough to get this process moving without having to worry about whether or not something in the ACC Rules fatally infects the process and hasn't been thoroughly discounted. You also need to reconsider the September 1 filing date for a proposed ISA implementation plan. Finally, on this subject, you need to reconsider the use of the term "prudently incurred" in the cost recovery mechanism you have included in this rule. You are basically saying that you will do a prudency review of those costs if FERC has denied their recovery and thumb your nose at FERC and allow them to be collected anyway if you choose. Since we already know that the ISA may be fatally infected with the same problem the ISO has now - the IRS regulations related to private activity bonds and the so-called benefits and burdens test, as well as the difficulty of including a federal agency, which IRS has not contemplated - then you already have a basis for denying prudence in the incurring of these costs. This is a problem that is much larger than this Commission can tackle or even affect. The utilities ought to be put on notice now that they are taking the risk for moving forward with these subjects. They all know the impediments are there and have admitted it in public forums at the federal and state level already.

Finally, R14-2-1612.D. doesn't make sense. If you enter into a contract and don't file it with the Director of the Utilities Division on the basis that you think it complies with approved tariffs, you automatically give a lawyer who wants to defeat that contract at a later time a golden opportunity to do so. All he has to do is prove that some element of that contract does not comply with an approved tariff and the contract is not effective since it would have not had a Commission order approving it. The term "shall not become effective" means that the contract is defeated as if it never occurred. The consequences of that concept are enormous. Frankly, I like the idea of having the option of defeating a contract with an Affected Utility or other electric service provider which is dumb enough not to file the contract with the Commission. However, if I represented an Affected Utility or electric service provider, I would be very unhappy with this provision.

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Thank you in advance for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Lynch', with a stylized, cursive-like flow.

Robert S. Lynch

RSL:psr

cc: Service List

Arizona Transmission Dependent Utility Group

ACC Commissioners